

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-70011

WILLIAM KIBNER,

Defendant.

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**ORDER GRANTING PLAINTIFF'S "MOTION TO COMPEL"**

Pending before the court is Plaintiff United States of America's "Motion to Compel," filed on August 23, 2005. For the reasons set forth below, the court will grant Plaintiff's motion.

On January 4, 2005, Plaintiff filed a complaint against Defendant William Kibner, pursuant to 26 U.S.C. § 7401, to recover unpaid trust fund recovery penalty taxes assessed against Defendant for the tax period ending September 30, 1992 and unpaid federal income taxes for the tax years 1993 and 1998-2003. (Pl.'s Compl. at 1-3.)

On June 13, 2005, Plaintiff served Defendant with a copy of its "First Set of Interrogatories," "First Requests for Admissions," and "First Request for Production of Documents." (See Pl.'s Mot. at ¶ 3, Ex. A.) Having received no response to its discovery requests from Defendant, Plaintiff, on July 25, 2005, requested via letter that Defendant respond to its discovery requests as soon as possible, but no later than August 8, 2005. (*Id.* at Ex. A.) Again, Defendant did not respond. (*Id.*) Subsequently,

on August 22, 2005, Plaintiff contacted defense counsel relating to its discovery requests, but as of the filing of Plaintiff's motion, no response has been received. (*Id.* at ¶ 1.)

Pursuant to the federal rules, if a party fails to make a disclosure as required by Federal Rule of Civil Procedure 26(a), the other party may move to compel disclosure. Fed. R. Civ. P. 37(a)(2)(A). Rule 37 also provides that the motion "must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the information or materials without court action." Fed. R. Civ. P. 37(a)(2)(A).

Plaintiff has demonstrated to this court, through its motion and its exhibits, that it has made good faith attempts to obtain discovery responses from Defendant and Defendant has repeatedly failed to respond. Therefore, pursuant to Fed. R. Civ. P. 37(a)(2)(A), this court shall grant Plaintiff's motion to compel. Accordingly,

IT IS ORDERED that Plaintiff's August 23, 2005 "Motion to Compel" [Dtk # 10] is GRANTED.

IT IS FURTHER ORDERED that Defendant submit to Plaintiff responses to Plaintiff's "First Set of Interrogatories" and its "First Request for Production of Documents" no later than **November 17, 2005**.

S/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: November 3, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 3, 2005, by electronic and/or ordinary mail.

S/Lisa G. Teets

Case Manager and Deputy Clerk  
(313) 234-5522